

PAUL C. KOHLMAN  
LEE E. McDONALD

IBLA 82-953

Decided March 28, 1983

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 53065 (ND), M 53067 (ND).  
Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:  
Description of Land -- Regulations: Interpretation

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

APPEARANCES: Paul C. Kohlman, Lee E. McDonald, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These appeals are taken from decisions dated June 3, 1982, by the Montana State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offers M 53065 (ND) and M 53067 (ND). The offers were for accreted lands adjacent to surveyed acquired lands administered by the Corps of Engineers.

BLM rejected the offers pursuant to 43 CFR 3101.2-3(c) because no metes and bounds descriptions were furnished. The regulation states:

Accreted lands. Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

In offer M 53065, the lands sought are described as follows: "Township 153 North, Range 100 West, 5th P.M. Section 34: Accretion to lots 2, 3 (Tract A); Township 152 North, Range 99 West, 5th P.M. Section 5: Accretion to lot 3 (Tract A) 11.60 acres." The file contains two Corps of Engineers maps showing the irregularly shaped parcels, which abut the Missouri River. In offer M 53067 the description is: "Township 154 North, Range 98 West, 5th P.M. Section 35: Accretion to lot 1 (Tract A) 3.20 acres." Both offers contain handwritten notations to the effect that the lands cannot be plated.

In the statement of reasons, appellants point out 43 CFR 3101.2-3 contains 3 parts -- (a), (b), and (c). We have quoted part (c) above. Parts (a) and (b) of the regulation provide:

§ 3101.2-3 Description of lands in offer.

(a) Surveyed lands. If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b)(1) Lands not surveyed under the rectangular survey system. If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by paragraph (b)(2) of this section.

Appellants contend that (b)(3) (description by acquisition tract number) is an alternative to subsection (c) which requires a metes and bounds description for accreted lands. Appellants allege that the lands embraced by these offers were flooded by the Corps of Engineers and that the only feasible method of description is by acquisition tract numbers. Thus, appellants argue that accreted lands should be included under (b)(1), as lands not surveyed under the rectangular survey system. Finally, appellants cite Walter R. Wilson, Jr., 55 IBLA 96 (1981), contending that rejection of their offers would conflict with our holding therein.

[1] In Wilson, *supra*, the Board examined 43 CFR 3101.2-3 together with its predecessor 43 CFR 3212.1, noting that no substantive changes were intended in the 1970 revision. The analysis in Wilson indicates that (b)(2) and (b)(3) of 43 CFR 3101.2-3 retain the substantive import of the earlier regulation if they are construed as applying to both surveyed and unsurveyed lands. While the Board observed that the regulation was not a model of clarity, it had no occasion, in Wilson, to discuss the applicability of the provision relating to accreted lands. We do so now.

In both versions of the regulation, the provision on accreted lands is identically worded and contains the mandate that such lands must be described by metes and bounds. Appellants' suggestion that the regulation offers the alternative of describing accreted lands by acquisition number entirely disregards this mandate. We perceive no vagueness or ambiguity in the regulation where accreted lands are concerned. Offers requesting such lands must include a metes and bounds description. BLM correctly rejected appellants' offers for lack thereof.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

R. W. Mullen  
Administrative Judge

